

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PAUL SATTERFIELD	:	CIVIL ACTION
Petitioner,	:	
	:	
vs.	:	
	:	
PHILIP L. JOHNSON, et al.,	:	
Respondents	:	
	:	NO. 02-0448

ORDER AND MEMORANDUM

ORDER

AND NOW, this 16th day of November, 2004, upon consideration of Petitioner's Motion to Vacate Stay and Modify Initial Custody Order filed by *pro se* petitioner, Paul Satterfield, (Document No. 42, filed July 29, 2004), Response to Petitioner's Motion to Vacate Stay and Modify Initial Custody Order and Supporting Memorandum (Document No. 45, filed August 13, 2004), and Petitioner's Reply (Document No. 46, filed August 23, 2004), **IT IS ORDERED** that Petitioner's Motion to Vacate Stay and Modify Initial Custody Order is **DENIED**.

MEMORANDUM

I. INTRODUCTION

Petitioner, Paul Satterfield, is a state prisoner currently serving a life sentence at State Correctional Institution-Fayette in LaBelle, Pennsylvania. His sentence arises out of a June 10, 1985 conviction for first degree murder and possession of an instrument of crime.

Petitioner filed a Petition for a Writ of Habeas Corpus on January 28, 2002. By Order and Memorandum dated June 21, 2004, this Court granted the habeas petition with respect to the claim that petitioner's trial counsel was ineffective. *Satterfield v. Johnson*, 322 F. Supp. 2d 613,

614 (E.D. Pa. 2004). In that Order, the Court vacated the convictions for first degree murder and possession of an instrument of crime and the sentence, and stayed the execution of the writ of habeas corpus for 180 days to permit the Commonwealth of Pennsylvania (“Commonwealth”) to grant petitioner a new trial. The Commonwealth appealed the ruling of this Court on July 21, 2004. The appeal is presently pending.

On July 29, 2004, petitioner filed the instant Motion to Vacate Stay and Modify Initial Custody Order. That Motion is denied.

The facts of the case are detailed in this Court’s opinions in *Satterfield v. Johnson*, 218 F. Supp. 2d 715 (E.D. Pa. 2002), and *Satterfield v. Johnson*, 322 F. Supp. 2d 613. The facts will be repeated in this Memorandum only where necessary to explain the Court’s ruling.

II. DISCUSSION

Fed. R. App. P. 23(c) provides that when the Government appeals a decision granting a writ of habeas corpus, the habeas petitioner shall be released from custody “unless the court or justice or judge rendering the decision, or the court of appeals or the Supreme Court, or a judge or justice of either court orders otherwise.” The Supreme Court has recognized in Fed. R. App. P. 23(c) a presumption of release pending retrial but, in doing so, it underscored that “[A] successful habeas petitioner is in a considerably less favorable position than a pretrial arrestee, [having] been adjudged guilty beyond a reasonable doubt by a judge or jury, and this adjudication of guilt [having] been upheld by the appellate courts of the State.” *Hilton v. Braunskill*, 481 U.S. 770, 779 (1987).

The Supreme Court in *Hilton* explained that the decision of a district court on the question whether to release a petitioner on bail pending the Commonwealth’s appeal of the grant

of a writ of habeas corpus should be guided by an analysis of several factors:

[W]e think that a court making an initial custody determination under Rule 23(c) should be guided not only by the language of the Rule itself but also by the factors traditionally considered in deciding whether to stay a judgment in a civil case [T]he possibility of flight should be taken into consideration [.] . . . We also think that, if the State establishes that there is a risk that the prisoner will pose a danger to the public if released, the court may take that factor into consideration in determining whether or not to enlarge him. The State's interest in continuing custody and rehabilitation pending a final determination of the case on appeal is also a factor to be considered; it will be strongest where the remaining portion of the sentence to be served is long, and weakest where there is little of the sentence remaining to be served.

The interest of the habeas petitioner in release pending appeal, always substantial, will be the strongest where the factors mentioned in the preceding paragraph are weakest. The balance may depend to a large extent upon determination of the State's prospects of success in its appeal. Where the State establishes that it has a strong likelihood of success on appeal, or where, failing that, it can nonetheless demonstrate a substantial case on the merits, continued custody is permissible if the second and fourth factors in the traditional stay analysis militate against release.

Hilton, 481 U.S. at 777-78.

Petitioner sets forth in his Petition and Reply many facts, not in evidence before this Court, in support of his argument that, because of the conduct of the Commonwealth, it is not entitled to a new trial and that, in any event, the Commonwealth will not prevail in any new trial. The Commonwealth, on the other hand, argues that “the evidence against petitioner is quite strong. He spontaneously confessed to the crime to his tennis partner, whom he had met more than a year after the killing took place. The jury heard this witness’ testimony and found him entirely credible.” Response to Petitioner’s Motion at p. 2. In order to address these conflicting positions, this Court would be required to schedule an evidentiary hearing which would involve appointment of counsel and a significant delay in proceedings so as to enable counsel to review

the voluminous record. However, that is unnecessary because the Court concludes that, by reason of developing case law related to the timeliness of petitioner's habeas corpus petition following this Court's ruling on that issue on June 21, 2004, some of which was noted in that opinion, petitioner has not made a strong showing that he is likely to succeed on the merits.

In deciding to reach the merits of petitioner's claims, this Court determined that petitioner's "Petition for Writ of Habeas Corpus Ad Subjiciendum - *inter alia* - King's Bench Matter" and his motion for reconsideration of the denial of the King's Bench petition were properly filed petitions for state collateral relief. *Satterfield v. Johnson*, 218 F. Supp. 2d at 724. In the Order and Memorandum of September 6, 2002, this Court also determined that the limitation period of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2254, should be tolled during the time the King's Bench petition and the motion for reconsideration were pending. *Id.* In so ruling this Court relied on the Third Circuit opinion in *Nara v. Frank*, 264 F.3d 310 (3d Cir. 2001). Thereafter, the Third Circuit in *Merritt v. Blaine*, 326 F.3d 157, 166 (3d Cir. 2003), clarified the law with regard to what constitutes a "properly filed" petition for state collateral relief in Pennsylvania and noted that, because of the intervening Supreme Court decision in *Carey v. Saffold*, 536 U.S. 214 (2002), "*Nara* would be analyzed differently." *See Merritt*, 326 F.3d at 166, n.7. This Court in its Memorandum of September 6, 2002, noted the fact that the *Saffold* case might be read to "somewhat narrow the construction of what constitutes a 'properly filed' state petition," but concluded that it was inappropriate to decide whether *Nara* - and district court opinions following it - have in fact been undermined by *Saffold*, and decided that this determination was better left to the Third Circuit. *Satterfield v. Johnson*, 218 F. Supp. 2d at 721, n.8.

The *Saffold* and *Merritt* decisions represent a refinement in the law that this Court applied in deciding on September 6, 2002, that the instant Petition for Writ of Habeas Corpus was timely filed. In view of the issues raised in *Saffold* and *Merritt*, the Court concludes that petitioner has not made a strong showing that he is likely to succeed on the merits.

III. CONCLUSION

This Court concludes that, because of decisions of the Supreme Court and the Third Circuit on what constitutes “a properly filed” petition for purposes of the AEDPA limitation period after this Court decided the issue on June 21, 2004, petitioner has not made a strong showing that he is likely to succeed on the merits. To the contrary, the Third Circuit might very well decide that the instant petition was untimely. Based on *Hilton*, this Court concludes that determination, without more, warrants denial of the Motion to Vacate Stay and Modify Initial Custody Order.

BY THE COURT:

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.